

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

9 RE: Motion in Limine to Inquire as to Attorney-Client  
10 Communications During Cross-Examination of Cooperating  
11 Witnesses, Motion in Limine as to Predisposition Evidence,  
Motion to Dismiss Count 3 and Count 4 of the First  
Superseding Indictment, and Final Pretrial Conference.

12 DATE: June 2, 2022

13 LOCATION: Burlington, Vermont

14 BEFORE: The Honorable William K. Sessions, III  
Senior District Judge

## 16 APPEARANCES:

17       Wendy L. Fuller, AUSA  
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1 (The Court opened at 1:30 p.m.)

13 THE COURT: All right. Mr. Matson, you filed a  
14 motion in limine, and I'll hear you in regard to that motion.

15 ATTORNEY MATSON: Thank you, Your Honor. Your Honor,  
16 let's take up the question of the predisposition --

17 THE COURT: Yes.

18 ATTORNEY MATSON: -- evidence first. So I want to  
19 say at the outset I do agree that we've been here before and  
20 we've talked about that predisposition evidence coming in. I  
21 guess what prompted my motion in limine was when I saw that  
22 Nguyen was the purported witness as to that predisposition  
23 evidence. I, maybe I made an assumption, but the assumption  
24 was that, if they wanted to raise an issue of possession of  
25 firearms prior, fine. I can see the relevance of that in a

1 case like this as to predisposition, but Nguyen's testimony in  
2 particular really goes into this more detail about the, quote,  
3 robbery, the attempted robbery, whatever it is, and that bears  
4 very little resemblance to any of the charges put in front of  
5 the jury. So --

6 THE COURT: So I, I read your memorandum, and, when  
7 we're talking about predisposition, you seem to confuse the  
8 issue, at least as regard to the Hobbs Act. Essentially, the  
9 government is seeking to introduce all of those discussions in  
10 preparation for a Hobbs Act violation, because it's relevant to  
11 the gun charge, and you have raised an entrapment defense, not  
12 just of the, of the cocaine offenses, but also the gun charge.

13 You know, it raises to me a question. First of all, do  
14 you really have an entrapment defense on the gun charge, and,  
15 if so, is it obvious that a discussion involving the defendant  
16 with a coconspirator for a violent Hobbs Act violation with  
17 guns, et cetera, occurring in October of 2019, just about the  
18 same time of these particular offenses -- in fact, it's the  
19 same time as the 924(c) count alleges. Isn't it, isn't it just  
20 very clear evidence of predisposition?

21 ATTORNEY MATSON: Well, Your Honor, two things. I  
22 clearly didn't think I confused the issue, but -- I did not  
23 think that I confused the issue or did I continue, but I  
24 respect Your Honor's opinion on that.

25 THE COURT: Okay. Well, no. I looked at the

1       pleadings, and you kept talking about there's no predisposition  
2       in regard to narcotics, right? Well, then --

3           ATTORNEY MATSON: Judge, a 924 requires, right, a  
4       924(c) requires, not just guns in any circumstance, it's a drug  
5       deal. It is an alleged drug deal during which a firearm was  
6       traded in lieu of currency. That's what this is.

7           THE COURT: Right.

8           ATTORNEY MATSON: That's not Hobbs Act. That's not a  
9       robbery. It's not a robbery. It's the gun was supposed to be  
10      money. Instead of money, I'll take the gun. I don't -- I  
11      think that's pretty straightforward. When we get into all  
12      these other issues with the Hobbs Act and the robbery and  
13      whatever else implements were used, well, that would be a way  
14      for a predisposition to, again, have a drug deal, and, in the  
15      drug deal, currency is replaced for a firearm. That's a  
16      distinct issue.

17       And now it's just talking about things that may make  
18       someone look bad, and that's, that's where the line gets drawn  
19       where it becomes prejudicial because that is, okay, evidence of  
20       the predisposition to what, crime? Predisposition to robbery?  
21       Fine, predisposition to robbery. He's not on trial for  
22       robbery, though.

23           THE COURT: Well, all right. So maybe I'm a bit  
24       confused by your argument. So what you're suggesting is you  
25       are not, you are not arguing that he was not predisposed to

1 possess firearms?

2 ATTORNEY MATSON: Correct.

3 THE COURT: Is that it?

4 ATTORNEY MATSON: Right. And that's what I  
5 understood the predisposition that the government intended to  
6 bring in was that he was predisposed to possess firearms, to  
7 acquire firearms, to get firearms through various sources. I  
8 get it. That is, that is relevant predisposition evidence. It  
9 doesn't matter whether I agree with it or whether I accept it  
10 for its truth. I agree that it's relevant, however. When we  
11 start to get too far afield of that and again start to get into  
12 the details of this uncharged robbery, I feel like we've left  
13 the realm of relevance, because he's not on trial for robbery.  
14 I'm not saying he's entrapped into a robbery. He's not charged  
15 with it.

16 THE COURT: All right. So what you're -- I'll just  
17 approach it this way: So a possession of a firearm in  
18 furtherance of a drug conspiracy, you've got to prove, number  
19 one, possession of a firearm and, number two, in furtherance of  
20 the drug conspiracy. What you're suggesting is that you are  
21 not in any way suggesting that he was not predisposed to  
22 possess a firearm? You're, you are going to acknowledge that  
23 to the jury that, you know, he, he was perfectly predisposed to  
24 have a firearm?

25 ATTORNEY MATSON: No, I'm not -- even if it were

1       predisposition beyond a reasonable doubt, I'm not going to  
2       concede any predisposition.

3                   THE COURT: So, in other words, they have to prove  
4       predisposition for both elements of the offense. That's  
5       possession of the firearm as well as intent in furtherance of a  
6       drug conspiracy. Then predisposition evidence has to be  
7       proven, and then he would be able to bring in the Hobbs Act,  
8       unless you stood up and said, Oh, you know, we admit that he  
9       would be in furtherance of a, or that he would be in possession  
10      of a firearm. It's just, it's not in furtherance of the, of  
11      the conspiracy; is that right?

12                  ATTORNEY MATSON: I didn't think so, Judge, but again  
13      --

14                  THE COURT: Okay. Anyway --

15                  ATTORNEY MATSON: There has to be a line drawn where  
16       it gets too far afield, right, where we're no longer talking  
17       about the evidence.

18                  THE COURT: This is the quality of the evidence. I  
19       understand it, but it does seem to me that, if you have to, if  
20       the government has to prove possession of a firearm and you  
21       have an entrapment defense which relates to possession of a  
22       firearm as well as in furtherance of the drug conspiracy, then  
23       they have to be able to show predisposition, i.e. the Hobbs  
24       Act, in October of 2019. Isn't that self-evident?

25                  ATTORNEY MATSON: I don't think that they need to go

1 into the, the robbery, no, Judge. They wanted somebody to say  
2 -- and this is why. There is another individual -- his last  
3 name is Hyde -- who I saw his testimony prior from the grand  
4 jury, and Hyde said, I had seen Mr. Martin with a firearm, all  
5 right, and Mr. Martin expressed that he wanted and would like  
6 to get a firearm, right? He was predisposed to taking a  
7 firearm from whatever source, right? That is heartland  
8 predisposition that I do not concede, but I absolutely concede  
9 its relevance.

10 THE COURT: Right.

11 ATTORNEY MATSON: And, evidently, when we go beyond  
12 that into, you know, what he's doing with a firearm allegedly,  
13 then I think we've gone too far.

14 THE COURT: So let's just assume there's some  
15 discussion between the codefendant or the coconspirator in the  
16 Hobbs Act about possessing or bringing firearms to their  
17 planned venture. When, what you want to do would be to permit  
18 the government to talk about all of the things that were said  
19 with Peter whatever-his-name-was about possession of firearms,  
20 use of firearms, but then not get into the details of what they  
21 plan the Hobbs Act?

22 ATTORNEY MATSON: Correct, Judge.

23 THE COURT: In other words, what you would want to do  
24 is limit their discussion about the objective of the  
25 conspiracy; it's just that the two of them were going to get

1 together and use firearms?

2 ATTORNEY MATSON: Correct, Judge. That's, that is my  
3 position.

4 THE COURT: Okay. So let me, let me get the  
5 government's response to that and think more, more about that.  
6 Do you have a second motion in limine as well?

7 ATTORNEY MATSON: I do, Judge. Again, I did not find  
8 a case directly on point.

9 THE COURT: The government did, though?

10 ATTORNEY MATSON: No.

11 THE COURT: No?

12 ATTORNEY MATSON: All I'll do is reaffirm that Your  
13 Honor has discretion, and I, I can see Your Honor has  
14 discretion.

15 THE COURT: Oh, good.

16 ATTORNEY MATSON: And I ask for you to use your  
17 discretion --

18 THE COURT: Oh, okay.

19 ATTORNEY MATSON: -- for the defense's point of view.

20 THE COURT: But in the *Logan* case, the court, the  
21 Second Circuit said the court has discretion.

22 ATTORNEY MATSON: Correct.

23 THE COURT: So --

24 ATTORNEY MATSON: Right. And it wasn't abuse of the  
25 discretion. Judge, there gets to be a point where these

1 cooperation agreements are very misleading, and I don't -- I'm  
2 not breaking attorney-client privilege. I've seen it. I've  
3 been there. There's got to be a conversation with a defendant  
4 who's going to cooperate. The guidelines analysis is  
5 calculated. Sometimes a defendant enters into a minimum  
6 mandatory plea.

7 It makes it look like, Oh, my goodness, this witness here,  
8 things got worse for them when they cooperated, because the  
9 jury has no clue that you can't go beneath the minimum  
10 mandatory unless you cooperate. And, Judge, bias and  
11 motivation and what they hope to accomplish in cooperating,  
12 what the witnesses hope to accomplish by testifying at a trial,  
13 that goes directly to their motivation and their bias against  
14 Mr. Martin and in favor of themselves, and, when we paint a  
15 misleading picture, Judge, and I'm not allowed to inquire about  
16 it, the Sixth Amendment trumps attorney-client privilege.

17 THE COURT: Well, it would trump attorney-client  
18 privilege maybe in circumstances where the fundamental  
19 information would go, not just to an issue of credibility, but  
20 to be, to a substantive fact. Here, the, the defendant or the  
21 witness -- if the witness was to testify, he would be  
22 cross-examined about his understanding of the agreement, all  
23 that led, led into his acceptance of the agreement. So you're  
24 going over the same issues that you would theoretically go over  
25 if you had attorney-client privilege. There's only a, you

1 know, only an issue of a slight difference in weight and,  
2 counter to that, a violation of really the sacrosanct  
3 attorney-client privilege. When you're only dealing with an  
4 issue of credibility, that's a long stretch, seems to me.

5 ATTORNEY MATSON: I think, Judge, that, certainly,  
6 the guidelines calculation, if someone thinks, The lawyer just  
7 told me the guidelines calculation puts me at, you know, 28,  
8 30, well, I'd better cooperate. I think I agree with -- I  
9 appreciate the attorney-client privilege. I'm for it.

10 THE COURT: Right.

11 ATTORNEY MATSON: However, I'm not for misleading the  
12 jury about what motivations may lie in the mind of a witness.

13 THE COURT: You like attorney-client privilege?

14 ATTORNEY MATSON: I do, Judge. I believe in it.

15 THE COURT: Well, you raise a question about whether  
16 an attorney's statement to a client about the guideline ranges  
17 would even be admissible in the first place. I mean, that is  
18 prejudicial. That shows what a defendant is facing by way of  
19 penalty in a jury trial and --

20 ATTORNEY MATSON: A witness.

21 THE COURT: Oh, that would be --

22 ATTORNEY MATSON: A witness, Judge.

23 THE COURT: -- pretty significant.

24 ATTORNEY MATSON: A witness, though, not a defendant.  
25 I believe in the attorney-client privilege, but, first and

1 foremost, I believe in a fair trial where a defendant gets to  
2 ask a witness everything that led into why that witness is up  
3 on the stand to get out of their own wrongdoing and blame  
4 somebody else.

5 THE COURT: Well, okay, appreciate that.

6 ATTORNEY MATSON: Thank you, Your Honor.

7 THE COURT: All right. So the government's response?

8 ATTORNEY FOSTER: Your Honor, first, on the motion in  
9 limine about Mr. Nguyen's testimony -- the defendant's  
10 possession of a gun in connection with the Hobbs Act robbery in  
11 October of 2019, as the Court knows, is very close in time to  
12 when he was seeking to possess a gun in connection with the  
13 firearms reverse. We think that the possession in that context  
14 shows an interest in acquiring a gun, which we have to prove  
15 that he possessed one and was trying to acquire one,  
16 familiarity with guns, familiarity with how to get a gun, knows  
17 where to get them, and that he will use them for an illegal  
18 purpose.

19 I think it would actually be less relevant evidence if we  
20 were just to show that he was legally using a gun at, you know,  
21 a shooting range or something like that. The Hobbs Act robbery  
22 shows a motive and an intent to use a gun and get a gun for an  
23 illegal purpose, and that's the point of introducing the  
24 evidence. I think the door is open if he says he was not  
25 predisposed to acquire a gun.

1                   THE COURT: Well, in terms of the entrapment defense,  
2 do you understand the defense's position that he was entrapped  
3 into possessing a firearm as well as in connection with a drug  
4 offense?

5                   ATTORNEY FOSTER: I understand that he's arguing he's  
6 entrapped for both, yes.

7                   THE COURT: Then you've got to show predisposition  
8 for both.

9                   ATTORNEY FOSTER: Correct.

10                  THE COURT: Okay.

11                  ATTORNEY FOSTER: Correct. And there is law on this,  
12 Your Honor. We cited it. I'll mention it briefly, the *Baez*  
13 case in the Second Circuit and the *McLaurin* case in the Fourth  
14 Circuit. Both of them go to evidence showing a predisposition  
15 to engage and use a gun in an illegal context, and that's  
16 important, not just using one innocently, but that you'll use  
17 one for an illegal purpose.

18                  On the privilege issue, I think Your Honor stated the law  
19 entirely correctly, the *Coven* case that talks about whether or  
20 not it's a collateral purpose such as general credibility.  
21 Here, that's all it is. There are three cases in the Second  
22 Circuit that address this exact issue and found that it's  
23 cumulative, unnecessary, and that the confrontation right under  
24 the Sixth Amendment does not trump attorney-client privilege in  
25 this case.

1 THE COURT: Okay, all right. Any response?

2 ATTORNEY MATSON: No, Your Honor.

3 THE COURT: All right. So I have reviewed the  
4 motions in limine filed by the defense, and both the motions  
5 are denied. The first is involving the exercise of  
6 attorney-client privilege. I, I would note that the defendant  
7 will have an opportunity to raise many, if not all, of the same  
8 issues that he would raise by having the attorney called as a  
9 witness. So he's not under prejudice.

10 And, in terms of the, the violate, the confrontation of,  
11 the Confrontation Clause and attorney-client privilege, one  
12 looks to the purpose of the information for which the attorney  
13 would be, would be questioned. Here it only goes to issues  
14 which are tangential. They're issues of credibility. It's not  
15 fundamental facts which will be revealed by the attorney-client  
16 privilege. And, as a result, in the exercise of the Court's  
17 discretion, the Court will deny the request for the ability to  
18 call the lawyer of the witness. And I don't -- I may very well  
19 follow that up with an argument, with a written opinion. We'll  
20 see.

21 And, in terms of the entrapment defense, again, I  
22 understand now the defendant's position, and that is that he  
23 was induced to possess a firearm, first, and that he was  
24 induced to possess a firearm in furtherance of a drug  
25 conspiracy, second.

1           When he claims that he was entrapped to possess a firearm,  
2 it opens up the question about whether he was predisposed to  
3 possess a firearm. And here the government has evidence to  
4 suggest that he was discussing with another person, at the same  
5 time of this particular charge in October of 2019, his intent  
6 to have a firearm and to use a firearm in the commission of a,  
7 of an offense.

8           Now, so, as a result, I'm going to deny the motion in  
9 limine. I'd like to know a little bit more about the nature of  
10 the conversation with the informant, because it may be that  
11 there may, that it, there could have been statements that were  
12 made which would be overly prejudicial and would not be  
13 particularly probative. So, if I can have a, before the  
14 witness testifies, if I can have a proffer from the government  
15 as to what exactly this witness would say, it may be that I  
16 restrict some of the statements which could be overly  
17 prejudicial, but I don't know exactly what the government's  
18 proffer is at this point. So I reserve judgment at least on  
19 that aspect of the motion in limine.

20           Okay. So that's, that addresses the motions in limine.  
21 The government's request is to dismiss Counts 3 and 4. Is  
22 there any objection to dismissing Counts 3 and 4?

23           ATTORNEY MATSON: No objection, Your Honor.

24           THE COURT: Okay. So those, that request is granted.  
25 So let's begin a pretrial conference, and the first thing I

1 want to address are Covid issues. The Court is unclear as to  
2 whether the Court -- okay. So I've just been notified by court  
3 staff that the trial will actually be conducted on the fifth  
4 floor in the main courtroom. Because of the Covid concerns,  
5 I've asked Judge Reiss for permission to use her courtroom, and  
6 she said that's fine.

7 So we're going to be having the trial in the main  
8 courtroom. That means the jurors can be spread out quite a bit  
9 more, that the parties would not be as close to the jury pool,  
10 and we would be able to draw a jury with a little bit more  
11 room. All right? I think that addresses the Covid concerns  
12 that I have. Because this is really, would really be tight for  
13 a trial during the Covid times. Are there any other concerns,  
14 at least in regard to Covid first, but then any other concerns  
15 that the parties have that we can address them now?

16 ATTORNEY FULLER: We don't have any Covid concern,  
17 Your Honor, but we did talk the last time we were here about  
18 having an entrapment instruction before we pick the jury. So I  
19 don't know if Your Honor is envisioning having a discussion  
20 before the jury comes in or having it now.

21 THE COURT: It would be while -- it would be Monday  
22 morning.

23 ATTORNEY FULLER: Okay. That's fine, just as long  
24 as, you know, we have an understanding of what that instruction  
25 says.

1                   THE COURT: I think I made clear in the last hearing  
2 that the defendant is relying upon inducement, that is, the  
3 officers calling him for these transactions. Still unclear as  
4 to how they're actually going to show inducement to the  
5 possession of a firearm, but at least they would be able to say  
6 inducement in terms of the purpose of distributing drugs. So  
7 they've announced that, and, in fact, Mr. Matson has said that  
8 it's likely to be in the opening statement.

9                   So my sense is that opens up the door to predisposition.  
10 I mean, that's satisfied. I know that Mr. Foster wanted me to  
11 make a ruling when they've offered sufficient evidence raising  
12 the question. I think they've done that by the use of this  
13 inducement argument. So I, I would just fully expect that  
14 you'd be able to go with predisposition evidence from the  
15 beginning.

16                   ATTORNEY FULLER: Okay. Thank you, Your Honor. I  
17 did have one -- of course, Mr. Matson's client doesn't have an  
18 obligation to open right after us, doesn't have an obligation  
19 to raise that defense or any defense. We have -- I know Your  
20 Honor in the past has been okay with having exhibits shown  
21 during opening.

22                   THE COURT: Yes.

23                   ATTORNEY FULLER: We have two exhibits we were  
24 thinking about showing. One is a video of cocaine. The other  
25 is a video of Mr. Martin holding a firearm and that -- or not a

1       video, it's a photo. That photo of Mr. Martin holding a  
2       firearm, there will be testimony we expect later on in the  
3       trial which indicates from the metadata of that picture that it  
4       was taken shortly before the 924(c) reverse.

5           So the government's position on that photograph is that,  
6       even if there is not an entrapment defense, even if Mr. Matson  
7       doesn't open, that the picture of the defendant carrying a  
8       firearm shortly before the 924(c) reverse is actually part and  
9       parcel of the charge itself. It's not dependent. That, the  
10      admissibility of that photograph is not dependent on the  
11      entrapment defense.

12           THE COURT: Okay. So the date of Count 2 is October  
13      19, as I recall.

14           ATTORNEY FULLER: The date of Count 2 is October  
15      23rd.

16           THE COURT: 23rd? Okay.

17           ATTORNEY FULLER: And the metadata on the photo is  
18      October 11th.

19           THE COURT: Okay.

20           ATTORNEY FULLER: So before we -- you know, I  
21       certainly don't want to show the photo in opening if Your Honor  
22       -- we're looking for a ruling from Your Honor as to whether  
23       Your Honor views that photograph as part of the evidence of the  
24       924(c), so exclusive of the entrapment, because we would like  
25       to show it to the jury in the opening but obviously will not do

1 so if -- we're hoping for an advance ruling that it is part of  
2 the 924(c), the evidence for the 924(c) crime.

3 THE COURT: Is it the same gun; do you know?

4 ATTORNEY FULLER: Same gun? Well, the gun that  
5 Mr. Martin traded --

6 THE COURT: The 11th and the 23rd, the same gun that  
7 he was in possession of?

8 ATTORNEY FULLER: On the 23rd, Your Honor, when he,  
9 the charged conduct was actually a reverse. So it was the ATF  
10 agent providing a firearm to Mr. Martin.

11 THE COURT: Oh, okay.

12 ATTORNEY FULLER: So the firearm that Mr. Martin is  
13 holding, actually, it, this gets too deep into the weeds, but  
14 the firearm that Mr. Martin is holding is part of the robbery  
15 firearm. It's the same night of the robbery. But we wouldn't  
16 be talking about it for that purpose. We'd be talking about it  
17 with him in the photo as it relates to the evidence of the  
18 924(c).

19 THE COURT: Right. Okay. Your response to that?

20 ATTORNEY MATSON: So, if I'm understanding this  
21 correctly, they want the photo as being relevant to the charge  
22 that, on October 23rd 2019, Carl Martin possessed a firearm  
23 that he received from an undercover?

24 THE COURT: I, I fail to see the connection.

25 ATTORNEY MATSON: Yeah, I don't think it's relevant

1 to the substantive charge.

2 THE COURT: Right. I don't see that possession as  
3 being relevant to the 924(c) count except for predisposition.

4 ATTORNEY FULLER: Okay.

5 THE COURT: So, in other words, I guess I'm  
6 suggesting that you not include it within your opening  
7 statement.

8 ATTORNEY FULLER: That's fine. The video seems to be  
9 not the same issue. It is a -- the evidence would establish  
10 that the video, the CI -- the UC will testify, the ATF  
11 undercover agent, will testify he received the video from  
12 Mr. Martin, and it contains a white substance. So, again,  
13 we're looking for the same sort of --

14 THE COURT: Okay. Any objection to this video?

15 ATTORNEY MATSON: No, Judge. That comes in,  
16 obviously.

17 THE COURT: All right. You can use the video.

18 ATTORNEY FULLER: We don't have anything else from  
19 the government, Your Honor.

20 THE COURT: All right. Mr. Matson?

21 ATTORNEY MATSON: All issues are on the table, Judge.  
22 I'm just trying to think of how to -- I've talked to Attorney  
23 Fuller this past week about some issues that may come up.  
24 Attorney Fuller was concerned about text messages, 600 pages in  
25 the exhibit list. Judge, just raising this now -- I don't want

1 to speak on your behalf, okay? No.

2 ATTORNEY FULLER: You do a good job of that.

3 ATTORNEY MATSON: Great, okay.

4 THE COURT: You're doing a fine job. Go ahead.

5 ATTORNEY MATSON: I'll keep going. Judge, there are  
6 some text messages between a confidential informant and an  
7 investigating officer that span two years. There's 600 of  
8 them. I premarked them all as an exhibit. I, I don't know how  
9 I'm going to use them, right? That's why I premarked them all  
10 as an exhibit. Attorney Fuller was concerned that I was going  
11 to stick 600 pages in front of the jury. Again, it depends  
12 what the witness testifies to. I'm just highlighting it to  
13 Your Honor. There probably will be some significant hearsay  
14 issues in this case, but, when it comes to the premarked 600  
15 pages, I don't want anyone to be surprised.

16 ATTORNEY FULLER: That is certainly my concern. When  
17 I saw a 600-page exhibit, I think I actually asked Mr. Matson,  
18 "Do you have a theory of admissibility as to each text  
19 message?" I understand that he doesn't have to preview his  
20 defense, he doesn't have to tell me what he's going to use. I  
21 just was going to raise it for the Court so that the Court was  
22 sort of aware that this issue was floating out there. There  
23 may be some lengthy discussion about what is admissible, what  
24 isn't admissible in those 600 pages. So I just wanted to  
25 preview that for the Court.

1 THE COURT: Okay. I'm on notice.

2 ATTORNEY MATSON: Related, Judge, I addressed to, in  
3 regard to those text messages, again, that's, that's a police  
4 officer working with a confidential informant, and they text a  
5 lot over two years. I asked --

6 THE COURT: And this confidential informant -- I  
7 mean, I assume it's the same one -- he will testify?

8 ATTORNEY FULLER: He is not testifying, not for the  
9 government.

10 ATTORNEY MATSON: Not on the government list. That  
11 brings to the point. I asked Attorney Fuller if she would  
12 agree that they were adverse witnesses for the point I'm  
13 calling them in the defense case in chief. I thought it was  
14 fairly straightforward that they were adverse witnesses in that  
15 they, in my opinion, concocted four controlled purchases with  
16 Carl Martin. Attorney Fuller does not concede that point. I  
17 may file something, Judge, in advance. I'm not trying to be  
18 eleventh hour. I honestly didn't think it would be an issue,  
19 but it will. It's fine. And I'll probably file some --

20 THE COURT: Yeah, you might want to say exactly how  
21 they received the benefit for their cooperation, what benefit  
22 they received, and then your argument would be they would be  
23 hostile witnesses, you can call them to testify, and you'd be  
24 able to ask leading questions.

25 ATTORNEY MATSON: Okay. I'll file something within

1 the next 24 hours, Judge. Thank you.

2 THE COURT: Okay, all right. Is there anything else?

3 ATTORNEY MATSON: No, Judge, nothing on my list.

4 THE COURT: So, as far as the schedule goes, my  
5 expectation was that it was going to be a four-day trial. Is  
6 that not correct?

7 ATTORNEY FULLER: I think the government's evidence  
8 we could get it in in three and a half. I don't know what he  
9 has for witnesses, but I think this, we will definitely, with  
10 opening, with picking the jury on Monday, maybe opening  
11 hopefully Monday afternoon, I think we will go through most of  
12 Thursday.

13 THE COURT: And I was going to have the trial day go  
14 from 9:00 to 12:00 and 1:00 to 4:00. A couple of days that  
15 there are conflicts after 4:00. So I thought we would make it  
16 a standard 9:00 to 12:00, 1:00 to 4:00, breaks, obviously, in  
17 the middle. And, Mr. Matson, do you anticipate the trial  
18 lasting longer than four days?

19 ATTORNEY MATSON: No, Your Honor. I'm having quite a  
20 bit of trouble finding that confidential informant, I'll say.  
21 So --

22 THE COURT: You're having trouble finding him?

23 ATTORNEY MATSON: Been chasing him all over the  
24 place.

25 THE COURT: Really, you're chasing him?

1                   ATTORNEY MATSON: Oh, yes. He's running from me.

2                   THE COURT: So that falls within the function of a  
3                   criminal defense lawyer --

4                   ATTORNEY MATSON: Chasing?

5                   THE COURT: -- chasing witnesses.

6                   ATTORNEY MATSON: Well, no comment, but, Judge, so  
7                   what, that would be two witnesses.

8                   THE COURT: Okay.

9                   ATTORNEY MATSON: And I would think that I could be  
10                  done in an afternoon.

11                  THE COURT: And the government really thinks it's  
12                  going to take three and a half days?

13                  ATTORNEY FULLER: Your Honor, we are still trying to  
14                  work out some stipulations. I think so. I mean, I just, I  
15                  would rather err on the side of too long than too short.

16                  THE COURT: And how many witnesses do you have?

17                  ATTORNEY FULLER: That's a good question. We can  
18                  give you a count right now, Your Honor.

19                  ATTORNEY MATSON: It's not an uncomplicated case,  
20                  Judge. It's been really difficult actually getting it all  
21                  together. So --

22                  ATTORNEY FULLER: I believe the most we would have  
23                  would be 13, but with some stipulations, hoping to --

24                  THE COURT: It would be less than that? Okay. Then  
25                  a final question: In light of the need for preparation, is

1 there any chance of resolution?

2 ATTORNEY MATSON: I don't believe so, Your Honor.

3 ATTORNEY FULLER: The government did extend a plea  
4 agreement last weekend, and that was not accepted.

5 THE COURT: Okay.

6 ATTORNEY FULLER: So I don't believe there is at this  
7 point.

8 THE COURT: All right. That's, Mr. Matson, is that  
9 correct? And do I need to go over the offer of the plea  
10 agreement with your client to make sure that he made a --

11 ATTORNEY MATSON: No, Your Honor. An offer was made.  
12 It was conveyed to Mr. Martin. That offer did not result in  
13 resolution.

14 THE COURT: Okay, all right. And you don't  
15 anticipate it in light of --

16 ATTORNEY MATSON: Not unless something happens when I  
17 walk out that door, Judge, in the next five minutes.

18 THE COURT: In the next five minutes?

19 ATTORNEY MATSON: I'm just trying to think of, you  
20 know, one step at a time.

21 THE COURT: Yeah, take it step by step. Okay, all  
22 right.

23 ATTORNEY FULLER: Would Your Honor -- I'm just kind  
24 of thinking about the timing of this. If the government's case  
25 does take us through Thursday and the defense, if they do call

1       witnesses Friday morning, we close Friday afternoon --

2                   THE COURT: Yes.

3                   ATTORNEY FULLER: -- what is the Court's practice if  
4       the jurors deliberate? I mean, is it over the weekend? Would  
5       they come back on Monday?

6                   THE COURT: They would come back on Monday.

7                   ATTORNEY FULLER: Okay. Thank you.

8                   THE COURT: Yeah. Okay, all right. Thank you.

9                   ATTORNEY FULLER: Thank you.

10                  ATTORNEY MATSON: Thank you.

11

12                  (Whereupon at 2:06 p.m. the hearing was adjourned.)

13

14                  C E R T I F I C A T E

15                  I, Sunnie Donath, RMR, Official Court Reporter  
16       for the United States District Court, District of Vermont, do  
17       hereby certify that the foregoing pages are a true and accurate  
18       transcription of my stenographic notes of the hearing taken  
19       before me in the above-titled matter on June 2, 2022 to the  
20       best of my skill and ability.

21

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*Sunnie Donath, RMR*

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Sunnie Donath, RMR

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